IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY**

**and**
**THE HON'BLE MR JUSTICE C.V.RAMULU**

**WRIT PETITION NO : 8404 of 2003**

Between:

M/s. Sri Vijaya Bhaskara Rice Company, Ramgopal Street,

Vijayawada - 520 001, Krishna Distric, rep. by its Proprietor,

Sri. Kurapati Lakshminarayana.

**..... PETITIONER**

AND

1 The Commercial Tax Officer, Samarangam Chowk, Vijayawada.
2 The Assistant Commercial Tax Officer, Samarangam Chowk,

Vijayawada.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ or Order or direction declaring the action of the Respondents in collecting Rs.16,800/- & Rs. 33,600/- vide their receipts dated 18-2-2003 towards tax and compounding fee respectively as illegal and without jurisdiction and consequently direct the Respondents to refund the amounts to the Petitioner.

**Counsel for the Petitioner: Mr. S. Dwarakanath.**

**For the Respondents: SPL GP FOR TAXES.**

**The Court made the following:**

**THE HON'BLE MR. JUSTICE B. SUDERSHAN REDDY**

**AND**

**THE HON'BLE MR. JUSTICE C.V. RAMULU**

**WRIT PETITION NO. 8404 OF 2003**

**ORDER:** (per Sri B. Sudershan Reddy, J)

The subject matter that arises for consideration in this writ petition is squarely covered by the decision reported in **AMBICA LAMP HOUSE, RAJAHMUNDRY V. COMMERCIAL TAX OFFICER (INT)-I ENFORCEMENT, HYDERABAD.**

Following the said decision, the writ petition is accordingly disposed of with the following observations and directions:

i. Under the provisions of the Act and the Rules, the Officers of the Vigilance/Intelligence Wing of the Department can exercise the powers that are conferred, such as inspection of the business premises, books of accounts, stock verification etc., apart from recording any statement from any of the responsible person of the business concern;

ii. Basing on such information, if any of the Officer of the said Vigilance or Intelligence Department is empowered to make assessments, such Officer can proceed to frame assessments basing on the material and such assessments could be completed only after complying the procedure provided under the provisions of the Act and the Rules., i.e, granting sufficient opportunity to adduce evidence by the dealer for the proposed assessment i.e., as to the quantities as well as valuation of the stocks etc; otherwise such material or information can be forwarded to the assessing authority having jurisdiction for taking appropriate action including the assessment, reassessment etc.

iii. There shall be at least a gap of one week between the date of an order of assessment, or demand notice, as the case may be, and an order compounding the offence, wherever the dealer comes forward with such an offer.

iv. The judgments in S.R. Traders and Bhavani Traders v. The ACCT & Ors., {(1993 17 APSTJ 125)}, KAKI BUTCHI Raju Son v. State of A.P. {(1994) 19 APSTJ 19)}; Badrinath Oil Company V. Assistant Commissioner, {(1995) 21 APSTJ 28}; Bharat Metals v. Special ACTO and another, 1998 (4) ALD 484 = {(1998) 27 APSTJ 72}; and Sri Lakshmi Venkata Raghava Traders V. CTO (Int. & Enforcement Wing) {W.P.NO.10668/1993}, cannot be said to be the authorities for the proposition that the inspecting officials of the Commercial Tax Department are empowered to pass orders compounding the alleged offences on the same day of inspection and to collect the amount specified in such orders, on the same day;

v. After completion of the assessment, it is open to the department to issue a demand notice along with the assessment order by providing time as contemplated under the provisions of the Act for collection of the tax.

vi. If any penalty proceedings are initiated by the competent authorities, even such proceedings are to be completed after giving notice and sufficient opportunity to the dealer, and thereafter the penalty order could be served along with a notice of demand, giving sufficient time for payment of the amount of penalty, if levied.

vii. If the penalty proposed is unrelated to the assessment of the tax liability, such penalty could be levied independent of the assessment proceedings, but if penalty is related to the assessable tax, such penalty proceedings could be initiated and completed only after completion of the assessment and not before.

viii. The petitioners shall be refunded the amounts collected from them, or be provided with an option to agree for adjustment of the same

towards payment of the tax in future.

ix. If the inspecting authorities are of the opinion that the books of account are required to be seized, they can do so only in accordance with the procedure contemplated under the Act and the Rules and not otherwise. Similarly even with reference to the seizure of the goods, the same is to be done as per the procedure provided, and in such cases, the dealer can also avail the benefit of getting the release of the goods on furnishing security as provided under the provisions of the Act and the Rules.

x. The Commissioner of Commercial Taxes is further directed to issue necessary circular to comply the directions of this Court by all the concerned officers.

It is needless to observe that it shall always be open to the Department to proceed further in the matter depending upon the information that may be available or that may be forthcoming for making any further assessment in accordingly with law. No costs.

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**B. SUDERSHAN REDDY,J**

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**C.V.RAMULU, J**

**26-04-2005**

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To

1 The Commercial Tax Officer, Samarangam Chowk, Vijayawada.
2 The Assistant Commercial Tax Officer, Samarangam Chowk,

Vijayawada.

3. Two CCs to the Special Government Pleader for Taxes, High Court of Andhra Pradesh, Hyderabad (OUT).

4. 1 CC to Mr.Srinivasa Reddy.

5. Two CD copies